



CITY OF NEWTON, MASSACHUSETTS

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Public Hearing Date:	September 22, 2008
Zoning and Planning Action Date:	to be determined
Board of Aldermen Action Date:	to be determined
90-Day Expiration Date:	to be determined

DATE: September 19, 2008

TO: Ald. Brian E. Yates, Chairman, and
Members of the Zoning and Planning Committee
Planning and Development Board

FROM: Michael Kruse, Director of Planning and Development
Jennifer Molinsky, Principal Planner/Zoning and Planning Coordinator *JMM*

SUBJECT: Petition #236-08, ALD. HESS-MAHAN proposing that the definition of "floor area, gross" in 30-1 be amended to clarify that the floor area in a half-story located immediately above the first floor is included in the calculation of floor area ratio.

CC: Board of Aldermen
Mayor David B. Cohen
John Lojek, Commissioner of Inspectional Services
Marie Lawlor, Assistant City Solicitor

RECOMMENDATION: ADOPTION OF AMENDED DEFINITION OF "FLOOR AREA, GROSS"

The purpose of this memorandum is to provide the Board of Aldermen, Planning and Development Board, and the public with technical information and planning analysis which may be useful in the decision making process of the Boards. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Zoning and Planning Committee of the Board of Aldermen will consider in its discussion at a subsequent Working Session.

I. SUMMARY – PETITION #236-08

The purpose of Petition #236-08 is to clarify that floor area in half-stories located immediately above the first floor is included in the calculation of floor area ratio (FAR).

Currently, the Zoning Ordinance excludes floor area in half-stories, as set out in the definition of “Floor area, gross” in Sec. 30-1:

Floor area, gross:

- (a) For residential structures in residential districts, the sum of the floor area within the perimeter of the outside walls of the building without deduction for garage space, hallways, stairs, closets, thickness of walls, columns, atria, or other features exclusive of any portion of a basement as defined in this section. For atria, open wells and other vertical open spaces, floor area shall be calculated by multiplying the floor level area of such space by a factor equal to the average height in feet divided by ten (10). Excluded from the calculation are bays or bay windows which are cantilevered and do not have foundations and which occupy no more than ten (10) per cent of the wall area on which they are mounted and any space in an attic or half-story as defined in this ordinance.”

(Please see Attachment “A” for full definition of “Floor area, gross” and related definitions.)

However, since all residential districts allow a second story as of right, it has been the policy of the Commissioner of Inspectional Services to include half-story floor area in FAR calculations *if* the half-story sits immediately *above the first story*. The purpose of petition #236-08 is to codify this policy by adding language to the definition of “floor area, gross” that exempts floor area only in half-stories *above a second story*.

II. BACKGROUND

In 1997, the Board of Aldermen adopted amendments to the Zoning Ordinance that largely limited residential dwellings to two and a half-stories. In adopting these provisions, the City wanted to limit, but did not wish to prohibit, owners from finishing potentially habitable space on a third floor within an existing building envelope. As a result, a “half-story” definition was crafted and granted exclusion from FAR calculations.

However, since all residential districts allow two stories as of right, it has been the policy of the Commissioner of Inspectional Services to count FAR in half-stories if the half-story lies immediately above the first story. Traditionally, examples of half-stories above the first story include one and a half-story Capes and half-story rooms built over attached garages.

In 2005, the Commissioner of Inspectional Services reported to the Zoning and Planning Committee that some builders were manipulating half-stories with the use of dormers to achieve significant living space above attached garages and first floors (in some cases, quite large first stories that use much of a site’s available FAR), and then contending that the half-story space is exempt from FAR calculations. The issue was taken up by the Zoning Task Force Half-Story/Dormer Subcommittee, which recommended a reexamination of the FAR exemption in half-stories in the context of a reexamination of FAR in general.¹

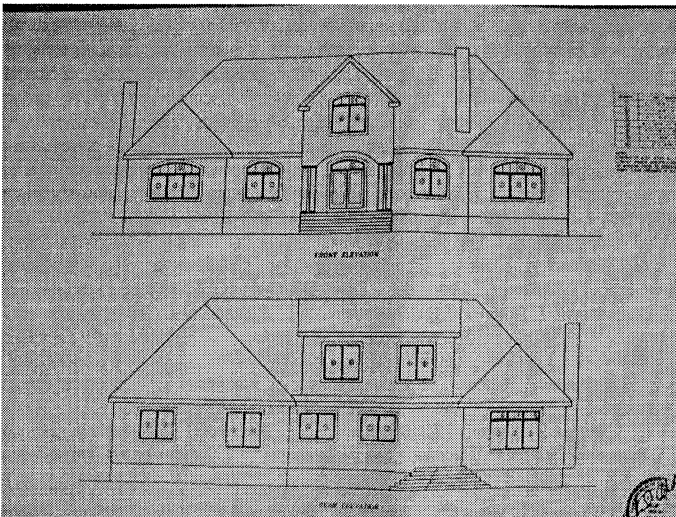
¹ The definition of “Story, half” was itself recently amended by Ordinance Z-20, April 7, 2008, to amend the ceiling height from which the half story is measured from 7’3” to 7’, an amendment made to bring consistency between the Building Code and Zoning Ordinance.

Recent examples of houses designed to circumvent FAR in second stories include:

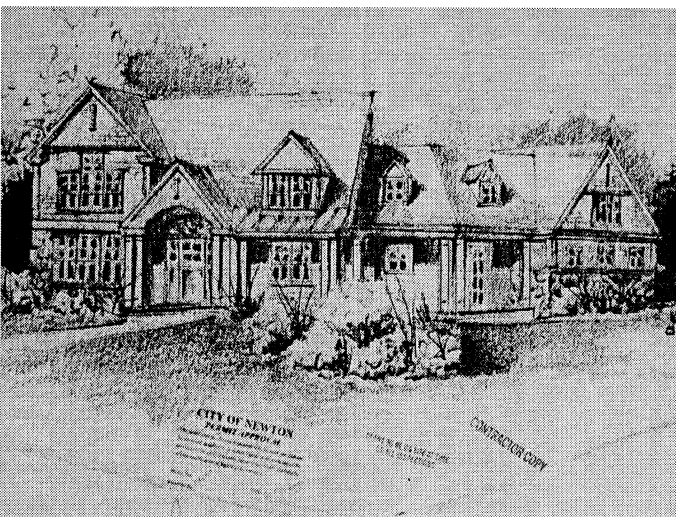


3 Redwood Avenue, half-story above attached garage.

In this case, the floor area above the garage was included in overall FAR calculations, although the builder attempted to circumvent FAR in the design of the garage and rooms above.



20 Carlson Avenue, proposed plans. Currently in appeal of denial of building permit application. Appeal concerns half-story FAR issues.



8 Longmeadow Avenue, proposed plans. Currently in appeal of denial of building permit application. Appeal concerns half-story FAR issues.

III. ANALYSIS AND RECOMMENDATION

Petition #236-08 would provide more clarity to the Zoning Ordinance and make it consistent with the 1997 intent (*as the Planning Departments understands it*) to exempt from FAR only area above the *second* floor, and would also codify existing policy of the Inspectional Services Commissioner.

If adopted, half-stories on the second floor would be included in FAR calculations. In general, small Capes that have not built out available FAR would be able to use dormers to achieve more living space in a half-story above the first floor. Building over attached garages or over larger one story homes would also remain possible, but the inclusion of FAR in these spaces will help limit mass, particularly on smaller sites (since FAR is a function of floor area and parcel size). ***The Department of Planning and Development therefore recommends adoption of an amended definition of "Floor area, gross."***

Should the Zoning and Planning Committee agree with the department's recommendation, the following language is suggested:

Amend the definition of "floor area, gross," part (a) by including the words "above the second story," as follows:

- (a) For residential structures in residential districts, the sum of the floor area within the perimeter of the outside walls of the building without deduction for garage space, hallways, stairs, closets, thickness of walls, columns, atria, or other features exclusive of any portion of a basement as defined in this section. For atria, open wells and other vertical open spaces, floor area shall be calculated by multiplying the floor level area of such space by a factor equal to the average height in feet divided by ten (10). Excluded from the calculation are bays or bay windows which are cantilevered and do not have foundations and which occupy no more than ten (10) per cent of the wall area on which they are mounted and any space in an attic or half-story above the second story as defined in this ordinance."

ATTACHMENT:

ATTACHMENT "A" – EXISTING DEFINITIONS RELATED TO HALF-STORY FAR

EXISTING DEFINITIONS RELATED TO HALF-STORY FAR

Attic: The space in a building between the ceiling joists of the top full story and the roof rafters.

Floor area, gross:

- (a) For residential structures in residential districts, the sum of the floor area within the perimeter of the outside walls of the building without deduction for garage space, hallways, stairs, closets, thickness of walls, columns, atria, open wells and other vertical open spaces, or other features exclusive of any portion of a basement as defined in this section. For atria, open wells and other vertical open spaces, floor area shall be calculated by multiplying the floor level area of such space by a factor equal to the average height in feet divided by ten (10). Excluded from the calculation are bays or bay windows which are cantilevered and do not have foundations and which occupy no more than ten (10) per cent of the wall area on which they are mounted and any space in an attic or half-story as defined in this ordinance.
- (b) For all others: the floor area within the perimeter of the outside walls of the building without deduction for hallways, stairs, closets, thickness of walls, columns or other features.

Story: That portion of a building, any part of which is above the ground elevation, excluding basements, contained between any floor and the floor or roof next above it.

Story, half: A story directly under a sloping roof where the area with a ceiling height of 7' or greater is less than 2/3rds the area of the story next below.